

How Can a Property Division Affect My Retirement Account?

The actual provisions governing retirement benefits are found in the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), and federal laws and rules. This publication is only a summary. If there are any conflicts between the information provided here and what is contained in the law, the applicable law will govern. For legal advice, please consult an attorney or other qualified adviser.

When you become divorced or legally separated, a court can divide your retirement account between you and your ex-spouse through a property division order. The order can direct the Department of Retirement Systems (DRS) either to:

- Award an interest in your account to your ex-spouse, or
- Split your account into two separate accounts — one for you and one for your ex-spouse — if you are a vested member of a retirement system.

This publication provides information about each of these options. If you are in the process of a divorce or legal separation and you have questions about property division orders not covered in this publication, please contact DRS at the number listed under *More Information* on page 10. To view the RCWs and WACs referenced in this publication, visit the Code Reviser's Web site at <http://slc.leg.wa.gov>.

Awarding an Interest in an Account

If a property division order awards an interest in your account to your ex-spouse, your ex-spouse will have the legal right to a portion of any retirement payments you receive. No payment will be made to your ex-spouse until you retire, withdraw contributions, or die. At that time, DRS will make payment directly to your ex-spouse.

The property division order must contain the provisions and language required by law. For more detailed information, please see:

- WAC 415-02-500 — for general information about dissolution orders
- WAC 415-02-510 — for information related to Plan 1 and Plan 2 members
- WAC 415-02-530 — for information related to Plan 3 members

Who Does This Apply To?

A court can approve a property division order to award an interest in your account to your ex-spouse if you are a member of any retirement system or plan administered by DRS. These include:

- Public Employees' Retirement System (PERS)
- Teachers' Retirement System (TRS)
- School Employees' Retirement System (SERS)
- Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF)
- Washington State Patrol Retirement System (WSPRS)
- Judicial Retirement System (JRS)
- Judges' Retirement Fund (JRF)

What Language Must Be Used in the Order?

The property division order must contain specific language in order to be valid. The exact language depends on your retirement plan.

• Plan 1 and Plan 2

The order must contain the language in WAC 415-02-510(2). This required language consists of two paragraphs. One paragraph provides payment to your ex-spouse of a portion of your monthly retirement benefit. The other paragraph provides payment to your ex-spouse of a portion of any withdrawal of contributions for which you become eligible. The order must state either a specific dollar amount or a percentage. It cannot state both.

• Plan 3

A Plan 3 account consists of a defined benefit portion which you receive at retirement and a defined contribution portion which you can receive any time after you separate from retirement-eligible employment.

- For the defined benefit portion, the order must contain the language in WAC 415-02-530(2). The order must state either a specific dollar amount or a percentage. It cannot state both.
- For the defined contribution portion, the order must contain the language in WAC 415-02-530(12). The order must state a specific dollar amount. It cannot state a percentage.

What if I Belong to More Than One Retirement Plan?

If you are a member of more than one retirement plan and you are awarding an interest in your account to your ex-spouse, your property division order must contain a separate provision for each plan. The required language must be repeated in the order. Each time it is used, the language must specify the retirement plan to which it applies.

Can I Send DRS a Draft of the Order?

DRS can review any draft property division order and tell you whether we can approve the order as written. We may offer suggestions as to how to incorporate the required language and will provide you with any account information you need to complete the order. However, we cannot suggest how your retirement account should be divided or provide legal advice. Only an attorney can provide you with legal advice.

What Should I Provide DRS When the Order is Filed?

You must submit a “conformed copy” of the order to DRS, that is, a copy of the order that has been signed by the judge or commissioner and filed with the court. When we receive the conformed copy, you will receive a letter to confirm receipt and whether DRS can comply with the terms of the order.

When Will My Ex-Spouse Receive Payment?

Your ex-spouse cannot receive payment until you receive payment from your retirement account. This can occur when:

- you retire and begin receiving a monthly retirement allowance;
- you request a withdrawal of your accumulated contributions (Plan 1 or 2);
- you request payment of your defined contributions (Plan 3); or
- your estate receives payment at your death.

Can the Amount Awarded to My Ex-Spouse Be Limited to the Amount I Earned During the Marriage?

How the property division order is written determines what portion of your monthly retirement benefit will be awarded your ex-spouse. The order can limit your ex-spouse’s share to a percentage of the service credit earned during the period of your marriage if the order uses the formula specified in WAC 415-02-500(15). See Example #1 below.

If the order does not use this formula, your ex-spouse will be awarded a percentage of your total benefit. See Example #2 below.

Example #1: Share of Benefit Earned During Marriage Period

John Doe earned 300 months of service while married. He has a total of 400 months of service credit when he retires. His monthly benefit before applying the terms of the order is \$2000. The order awards 50% of his benefit to his ex-spouse and uses the formula in WAC 415-02-500(15) to limit the ex-spouse’s share to what was earned during the marriage.

- The ex-spouse’s benefit will be calculated as follows:
 $300/400 \times 0.50 \times \$2,000.00 = \$750.00$

Example #2: Share of Total Benefit

John Doe earned 300 months of service while married. He has a total of 400 months of service credit when he retires. His monthly benefit before applying the terms of the order is \$2000. The order awards 50% of his benefit to his ex-spouse and *does not* limit the ex-spouse’s share to what was earned during the marriage.

- The ex-spouse’s benefit will be calculated as follows:
 $0.50 \times \$2,000.00 = \$1,000.00$

How Much of My Monthly Benefit Can My Ex-Spouse Receive?

A property division order cannot require DRS to pay more than 75 percent of your monthly retirement benefit to your ex-spouse. See RCW 41.50.670(4).

Can Monthly Payments Be Made for a Limited Period of Time?

A property division order can limit your obligation to a certain period of time. If the order does not specify a time limit, payment will continue until you die or your ex-spouse dies, whichever occurs first.

Example: Limiting Period of Time

John Doe is a member of a retirement plan administered by DRS. John and his wife Jane have filed for divorce. To provide Jane with \$500 from each of John's monthly retirement payments from April 1, 2001 to March 31, 2010, the first paragraph of the required two paragraph form must use the language shown below in *italics*.

If *John Doe* (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the Department of Retirement Systems shall pay to *Jane Doe* (the obligee) *\$500 from April 1, 2001 through March 31, 2010, to be paid in* dollars from such payments or *N/A* percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payments and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

What Salary Will Be Used to Calculate My Monthly Benefit?

Your monthly benefit is determined at the time you retire. If your property division awards a percent of your monthly benefit to your ex-spouse, your ex-spouse will receive the designated percent of your monthly benefit. This is true even though your salary at the time of dissolution may be lower than your salary at the time of retirement. If your property division awards a specific dollar amount to your ex-spouse, the specified amount will be deducted from your benefit at retirement.

If I Receive a Cost of Living Adjustment Will My Ex-Spouse Receive One Also?

Your monthly benefit may be subject to ongoing cost of living adjustments. If your property division order awards your ex-spouse a percentage of your monthly benefit, your ex-spouse's payment will be adjusted each time you receive a COLA. If your property division order awards your ex-spouse a specific dollar amount, your ex-spouse's payment will remain constant unless you include specific language in the order to award a portion of any COLA you receive to your ex-spouse. See the example on page 5.

Example: Providing COLA to Ex-Spouse

John Doe is a member of a retirement plan administered by DRS. John and his wife Jane have filed for divorce. To provide Jane with \$500 from each of John's monthly retirement payments plus a portion of any future COLAs, the first paragraph of the required two paragraph form must use the language shown below in *italics*.

If John Doe (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the Department of Retirement Systems shall pay to Jane Doe (the obligee) \$500 plus any applicable cost of living adjustments granted after retirement to be paid in dollars from such payments or N/A percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payments and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

What Happens if I Return to Work After Retirement?

Returning to work after retirement can affect any monthly benefit payment you are receiving. In turn, this can affect monthly property division payments to your ex-spouse. If you are considering returning to work after retirement, for information about the possible impacts on your benefit payment, please contact DRS at the number listed under *More Information* on page 10.

What Happens if My Ex-Spouse Dies Before Me?

Defined Benefit (Plan 1, Plan 2 and Plan 3): If your ex-spouse dies before you retire, the property division order will no longer apply and you will receive a full benefit when you retire. If your ex-spouse dies after you have retired, your monthly payment will return to the full amount.

Defined Contribution (Plan 3): If your ex-spouse dies before receiving payment of any funds from your account, the funds are payable to your ex-spouse's designated beneficiary or estate. This provision is effective on or after July 1, 2003.

What Happens if I Die Before My Ex-Spouse?

Defined Benefit (Plan 1, Plan 2 and Plan 3): When you die, your monthly retirement allowance ceases. Accordingly, payments to your ex-spouse also cease unless your ex-spouse was named as your survivor beneficiary. For the month of your death, your monthly benefit will be prorated for the number of days you were living during the month. The prorated payment will be divided between your beneficiary or estate and your ex-spouse.

Defined Contribution (Plan 3): If a property division order awards an interest in your defined contribution account to your ex-spouse, your death has no effect on your ex-spouse's ability to receive payment from his or her account. Your ex-spouse, however, must take payment from this account at the time of your death.

Can I Name Both My Current and My Ex-Spouse as Survivor Beneficiaries?

The property division order may require that your ex-spouse be named as survivor beneficiary when you retire. If, at the time of your retirement, you name someone other than your ex-spouse as survivor beneficiary, DRS has the authority to override your designation in order to comply with the property division order. See RCW 41.50.790.

LEOFF Plan 1 and WSPRS Plan 1: If you are a LEOFF Plan 1 or WSPRS Plan 1 member some exceptions apply. For details, please contact DRS at the number listed under *More Information* on page 10.

Can I Revoke My Survivor Option Designation?

If you named your ex-spouse as your survivor beneficiary at retirement, there are only two ways you can revoke the survivor designation.

- You can return to work and reestablish retirement membership. When you re-retire, you may change your survivor option depending on the rules of your retirement system and plan. Your re-retirement will not affect the original terms of the order. Please contact DRS via the information listed under *More Information* on page 10 for details; or
- You can obtain an amended court order to split your account. See the question “Can I Amend an Existing Order That Has Awarded an Interest in My Account?” on page 8 for details.

Note: If a property division order awards 100% of your monthly benefit to you and 0% to your ex-spouse, this does not revoke any survivor option you may have chosen at retirement. To revoke the survivor option, you must take one of the steps above.

Splitting an Account Into Separate Accounts

Beginning July 1, 2003, a property division order can split your retirement account into two separate accounts — one for you and one for your ex-spouse. Once split, the two accounts are independent of each other. You can withdraw contributions or retire and receive a monthly payment. Your ex-spouse can withdraw contributions or, upon reaching retirement age, retire and receive a monthly payment.

The property division order must contain the provisions and language required by law. For more detailed information, please see:

- WAC 415-02-500 — for general information about dissolution orders
- WAC 415-02-520 — for information related to Plan 1 and Plan 2 members
- WAC 415-02-540 — for information related to Plan 3 members

Who Does This Apply To?

A court can approve a property division order to split your account into two separate accounts only if you are a vested member of the:

- Public Employees’ Retirement System (PERS)
- Teachers’ Retirement System (TRS)
- School Employees’ Retirement System (SERS)
- Law Enforcement Officers’ and Fire Fighters’ Retirement System (LEOFF) Plan 2
- Washington State Patrol Retirement System (WSPRS) Plan 2

See page 10 for a definition of “vested member.”

What Language Must Be Used in the Order?

The property division order must contain specific language in order to be valid. The exact language depends on when the order is filed and accepted by DRS and your retirement plan.

For Orders Filed and Accepted BEFORE Retirement

- **Plan 1 and Plan 2**

The order must contain the language in WAC 415-02-520(5). The exact dollar amount of the ex-spouse's monthly benefit must be specified. The order cannot use a formula or percentage.

- **Plan 3**

A Plan 3 account consists of a defined benefit portion which you receive at retirement and a defined contribution portion which you can receive any time after you separate from retirement-eligible employment.

- For the defined benefit portion, the order must contain the language in WAC 415-02-540(5).
- For the defined contribution portion, the order must contain the language in WAC 415-02-540(9).

For Orders Filed and Accepted AFTER Retirement

- **Plan 1 and Plan 2**

The order must contain the language in WAC 415-02-520(8). The exact dollar amount of the ex-spouse's monthly benefit must be specified. The order cannot use a formula or percentage.

- **Plan 3**

A Plan 3 account consists of a defined benefit portion which you receive at retirement and a defined contribution portion which you can receive any time after you separate from retirement-eligible employment.

- For the defined benefit portion, the order must contain the language in WAC 415-02-540(13).
- For the defined contribution portion, if your account has not been fully paid out at the time of the final order, the remaining portion of your account will be split according to the provisions in WAC 415-02-540(3) through (6).

Note: Your account can be split after retirement *only if* you selected one of the survivor options for your ex-spouse at the time you retired.

What if I Belong to More Than One Retirement Plan?

If you are a member of more than one retirement plan and you are splitting your account, your property division order must contain a separate provision for each plan. The required language must be repeated in the order. Each time it is used, the language must specify the retirement plan to which it applies.

Can I Send DRS a Draft of the Order?

DRS can review any draft property division order and tell you whether we can approve the order as written. We may offer suggestions as to how to incorporate the required language and will provide you with any account information you need to complete the order. However, we cannot suggest how your retirement account should be divided or provide legal advice. Only an attorney can provide you with legal advice.

What Should I Provide DRS When the Order is Filed?

You must submit a “conformed copy” of the order to DRS, that is, a copy of the order that has been signed by the judge or commissioner and filed with the court. When we receive the conformed copy, you will receive a letter to confirm receipt and whether DRS can comply with the terms of the order.

How Can I Determine the Exact Dollar Amount to Specify for My Ex-Spouse’s Monthly Benefit?

If you are drafting a property division order to split your account you should contact DRS for assistance (See page 10 for contact information). A retirement services analyst will work with you to provide an estimate of your monthly benefit and the balance of contributions in your retirement account. You and your attorney can use this information to determine the dollar amount to specify for your ex-spouse.

How Much of My Monthly Benefit Can My Ex-Spouse Receive?

A property division order cannot require DRS to pay more than 75 percent of your monthly retirement benefit to your ex-spouse. See RCW 41.50.670(4).

Can I Amend an Existing Order That Has Awarded an Interest in My Account?

Prior to Retirement: You can amend an existing property division order to split the account between you and your ex-spouse. To do this you must obtain a court amendment of the initial order. The court may or may not agree to amend the earlier order. The amended order must contain the mandatory language set forth in WAC 415-02-520 (Plan 1 or 2) or WAC 415-02-540 (Plan 3). The order must be signed by the judge or commissioner on or after July 1, 2003.

After Retirement: You can amend an existing property division order *only if* you designated your ex-spouse as survivor beneficiary when you retired. When the amended order is filed and accepted by DRS, it will supersede the prior order, thereby revoking the designation of your former spouse as survivor beneficiary. You will then have the right to designate a new survivor beneficiary.

Note: If your existing order awards you 100% of the retirement benefit, you still must file an amended order to split your account in order to revoke your former spouse as survivor beneficiary and have your retirement benefit increased. The amended order must specify that you are to receive 100% of the split benefit and your ex-spouse is to receive 0%. See WAC 415-02-520 (Plan 1 or 2) or WAC 415-02-540 (Plan 3).

What Happens to My Account if the Order is Filed Before I Retire?

When the order is filed and accepted by DRS, a separate account is created for your ex-spouse under his or her Social Security Number. Once the account has been split, both you and your ex-spouse control your accounts independent of each other.

What Can I Do With My Account?

If you quit working, you can elect to withdraw accumulated contributions and forfeit any right to a future benefit. Or, upon qualifying for retirement, you can retire and receive a monthly benefit. Your monthly benefit will be payable over your lifetime and will be permanently reduced by the amount awarded to your ex-spouse in the property division order. You will have the right to select a survivor option for the monthly benefit.

What Can My Ex-Spouse Do With His or Her Account?

After the accounts have been split, your ex-spouse can elect to withdraw accumulated contributions and forfeit any right to a future benefit. Or, upon reaching the retirement age applicable for **your** retirement system and plan, your ex-spouse can elect to receive a monthly benefit. The monthly benefit will be payable over his or her lifetime. Your ex-spouse **cannot** choose a survivor option for the monthly benefit but can designate a beneficiary to receive any final payment that may be due.

Note: For TRS Plan 1, the benefit at retirement may include a lump-sum cashout of contributions and an ongoing monthly benefit.

What Happens to My Account if the Order is Filed After I Retire?

When the order is filed and accepted by DRS, a separate account is created for your ex-spouse under his or her Social Security Number. Once the account has been split, both you and your ex-spouse control your accounts independent of each other.

Please be aware that a property division order can split your account **only if** you selected a survivor option for your ex-spouse when you retired. If you did not select a survivor option, the order can only award an interest in your account to your ex-spouse.

What Happens With My Account?

Your monthly benefit will be recalculated according to WAC 415-02-520(7). Your monthly benefit will be payable over your lifetime. You can select a new survivor option for your monthly benefit and can designate a new beneficiary to receive any final payment that may be due. You must complete a new *Beneficiary Designation Form* and send it to DRS to designate a new beneficiary. The *Beneficiary Designation Form* is available through the DRS Web site at <http://www.drs.wa.gov/forms>.

What Happens With My Ex-Spouse's Account?

Your ex-spouse will receive a monthly benefit beginning the first month after the property division order is filed and accepted by DRS regardless of your ex-spouse's age. The monthly benefit will be payable over your ex-spouse's lifetime. Your ex-spouse **cannot** choose a survivor option for the monthly benefit but can designate a beneficiary to receive any final payment that may be due.

What Happens if I Return to Work After Retirement?

Once the account has been split, there is no impact on your ex-spouse's property division payment if you return to work after retirement. Your return to work, however, can affect any monthly benefit payment you are receiving. If you are considering returning to work after retirement, for information about the possible impacts on your benefit payment, please contact DRS at the number listed under *More Information* on page 10.

What Happens if My Ex-Spouse or I Die?

Once the account has been split, your death or your ex-spouse's death does not affect the other's account. When you die, a monthly payment may continue to your survivor or a final payment may be made to your beneficiary or estate. When your ex-spouse dies, a final payment may be made to his or her beneficiary.

Definitions

The following are definitions of some of the terms used in this publication.

- “Awarding an interest” means a court has awarded another party the right to receive payment of a portion of your monthly benefit and/or withdrawal of contributions.
- “Dissolution order” means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement as part of a decree of divorce, dissolution, invalidity, or legal separation.
- “Ex-spouse” means a person who is a party to a dissolution order.
- “RCW” refers to the Revised Code of Washington.
- “Splitting an account” means a court has awarded your ex-spouse the right to a separate retirement account that is created by dividing your retirement account.
- “Vested member” means a person who has earned enough service credit to be eligible for a service retirement when he or she meets the applicable age requirements.
- “WAC” refers to the Washington Administrative Code.

More Information

For information about the impact of other types of legal action, please see the publication called “Can Legal Action Affect My Retirement Account?” This and other DRS publications are available through the DRS Web site at <http://www.drs.wa.gov>.

For information about the rules that apply to each retirement system and plan, please refer to your Member Handbook which is available from your employer or DRS. Electronic copies of these handbooks are also available from the Member Publications page on the DRS Web site at <http://www.drs.wa.gov>.

DRS mailing address

Department of Retirement Systems
Name of your System (PERS, SERS, TRS, etc.)
PO Box 48380
Olympia WA 98504-8380

DRS telephone, email and Web contacts

- Outside the Olympia area call toll-free at: 1-800-547-6657
- In the Olympia area call: (360) 664-7000
- Send email to: recep@drs.wa.gov
- Visit the DRS Web site at: <http://www.drs.wa.gov>